

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States Courts
Southern District of Texas
FILED*December 10, 2019*

United States of America)

v.)

BRIAN LEMAR SMITH)

Case No.)

4:19mj2275

David J. Bradley, Clerk of Court

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of December 4, 2019 in the county of Harris in the
Southern District of Texas, the defendant(s) violated:*Code Section**Offense Description*

18 U.S.C. § 1704

18 U.S.C. § 1708

Possession of U.S. Postal Service Locks & Keys

Possession of Stolen Mail & Theft of Mail

This criminal complaint is based on these facts:

See Attached Affidavit of United States Postal Inspector Jesse Kirkegaard

☒ Continued on the attached sheet.*Complainant's signature*

Postal Inspector Jesse Kirkegaard

Printed name and title

Sworn to before me telephonically.

Date: December 10, 2019*Judge's signature*City and state: Houston, Texas

U.S. Magistrate Judge Christina A. Bryan

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Jesse Kirkegaard, being duly sworn, hereby depose and say:

1. Affiant is Postal Inspector (PI) with U.S Postal Inspection Service (USPIS) and have been so employed since August 2019. Affiant is currently assigned to the USPIS Mail Theft Team, which is tasked with the investigation of complex mail theft crimes, including but not limited to, credit card fraud, money order fraud and identity theft. I was previously a Special Agent with United States Secret Service (USSS) for approximately seventeen years. I have gained training in seminars, classes and everyday work-related investigations. I have personally participated in investigations involving violations of federal law regarding mail theft and criminal groups that result from unlawful activity. Affiant has gained experience in conducting such investigations through on-the-job training and everyday work-related investigations. Affiant has personally participated in investigations involving violations of federal law regarding mail theft and criminal groups that result from such unlawful activity. As Postal Inspector, Affiant is authorized to investigate violations of the United States and to seek forfeiture of property under authority of the United States.

2. Affiant submits this affidavit in support of a Criminal Complaint charging Brian SMITH with 18 U.S. Code § 1708 (Theft or receipt of stolen mail matter) and 18 U.S. Code § 1704 (Keys or locks stolen or reproduced).

3. Because this affidavit is being submitted for the limited purpose of securing a Criminal Complaint, Affiant has not included each and every fact known by the Affiant concerning the ongoing investigation. This affidavit is based upon Affiant's personal knowledge, or from information obtained or provided via records, and interviews of witnesses and other law enforcement agents. Where statements of others are set forth in this affidavit, they are set forth in substance and in part.

BACKGROUND AND EVIDENCE OF FRAUD

4. On or about September 9, 2019, the Pearland Police Department (PPD) contacted the Affiant in regards to checks that were stolen from the mail and altered. These checks were mailed

from Pearland Main Post Office (MPO) (located at 3519 East Walnut Street, Pearland, Texas 77581) or Silver Lake Post Office (located at 2700 Cullen Blvd., Pearland, TX 77584).

5. On October 9, 2019, Affiant met with PPD Detective Keith Love to discuss the case. Detective Love indicated that a majority of the complaints about altered checks are coming from victims who mailed their checks from the Pearland Post Offices. Continuing on that same date, covert cameras over watching the collection boxes at the Silver Lake Post Office and Pearland MPO were installed.

6. On November 18, 2019, Affiant was contacted by Pearland PD in reference to a victim, Jose Reyes, who mailed checks from the Pearland MPO on or about October 20, 2019. The two checks were later altered and deposited separately at different banks on different days for a total amount of \$8,009.17. This same date, Affiant recovered video surveillance from the Pearland MPO.

7. On November 19, 2019, while reviewing video surveillance, Affiant discovered two incidents in which a dark colored four-door Hyundai sedan, bearing Texas License Plate KXP-2504 arriving at the Pearland MPO on October 21, 2019, at approximately 07:32 AM and October 27, at approximately 9:26 P.M. On both occasions the vehicle parked next to the collection boxes. A brief moment later, a thin African American male was seen circling behind the vehicle as he approached the collection boxes. The male approached the smaller collection box and appeared to unlock the box with a key. The male proceeded to take the mail tub from within the unlocked mail box and appeared to dump the mail into the passenger compartment of the vehicle and then replace the postal tub in the collection box. The male then headed toward the front driver side of the sedan and the vehicle departed. Further review of video surveillance recording displayed a comparable method utilized to grab mail from the collection box by what appears to be the same individual but different vehicle, dark colored Toyota sedan bearing a paper plate on November 3, 2019 at approximately 11:34 P.M. Video footage further indicated what appears to be the same Toyota sedan but with a Texas license plate MVG-0236 and what appears to be same person using similar procedures to unlawfully seize the mail from the collection box on November 12, 2019 at approximately 2:57 A.M. and November 17, 2019 at 10:37 P.M.

8. On November 19, 2019, Affiant conducted a vehicle registration check on Texas license plate number KXP-2504 as observed on video surveillance from October 21 and October 27, 2019. The vehicle registration revealed that the vehicle was rented from Enterprise. Affiant contacted

Enterprise and was informed that the vehicle was rented by Pamela Gray. Continuing on this same date, Affiant conducted a vehicle registration check on Texas license plate number MVG-0236 as observed on video surveillance from November 12 and November 17, 2019. The vehicle registration revealed that the vehicle is registered to Pamela Gray at 150 Dominion Park Dr, Apt 1101, Houston, TX 77090.

9. On December 01, 2019, Affiant reviewed video surveillance for November 30, 2019, and discovered a dark colored Toyota sedan on video. While the license plate was not visible, the Toyota sedan appeared to be the same vehicle as previously observed and the person was observed using similar procedures to unlawfully seize the mail from the collection box on November 30, 2019 at approximately 11:20 P.M.

10. On December 02, 2019, Affiant and Postal Inspector Michael Ridley conducted surveillance in the general vicinity of 150 Dominion Park Dr, Apartment 1101, Harris County Texas. Affiant observed a red Toyota Corolla bearing Texas license plate number MVG-0236 parked in front of building 11, near the walkway between buildings 11 and 10, a walkway which leads to access to apartment 1101. A brief moment later, Affiant and PI Ridley observed an African Male exit Apartment 1101 carrying a white trash bag. As the African Male walked by Affiant and PI Ridley, both observed what appeared to be U.S Mail in the bottom of the white trash bag. The African American male was heard opening the front hatch on the apartment complex trash container and depositing the trash bag into the container and re-closing the hatch. Affiant and PI Ridley observed as the African Male returned to the apartment.

11. PI Ridley approached the trash container and opened the rear hatch, to allow him to observe the trash inside of the trash container. PI Ridley noted that the trash had recently been emptied, and observed the white trash bag and a small card board box inside of the trash container. From his vantage point, PI Ridley could observe that the white trash bag was full of U.S Mail. PI Ridley entered the trash container and recovered the white trash bag. PI Ridley called Affiant to assist with the recovery of the trash bag, as the mail was too heavy for the bag, and attempting to move it by himself would cause the bag to tear apart. PI Ridley handed the white trash bag to Affiant, and Affiant placed the white trash bag in PI Ridley's law enforcement vehicle.

12. PI Ridley informed Affiant that he recognized the African American male as the same individual he had observed in a picture which was circulated by PPD in reference to an ongoing fraud investigation in Pearland, TX. Affiant contacted PPD to inquire about the picture and was

informed by PPD that the individual in the picture was Brian Lemar Smith.

13. Affiant and PI Ridley reviewed the recovered mail at PPD. Agents recovered approximately 461 pieces of U.S. Mail, of which approximately 255 had been opened and/or its contents removed. Agents also recovered approximately 206 pieces of mail that have been removed from the mail stream but not opened. Agents observed that the majority of the opened mail contained payment stubs, and that the checks were missing. Agents also observed that the majority mail was un-cancelled mail indicating that the mail had not been processed by the Postal Service yet. Agents further discovered that the majority of the mail recovered contained return addresses in Pearland, TX.

14. On December 03, 2019, PI Wayne Palomar contacted victim, Robert Warren, a credible and reliable person residing in Brazoria County in reference to check #1536 recovered from the white trash bag previously discarded by Brian Smith on December 02, 2019. Warren stated that his wife mailed check number 1535 and 1536 on November 4, 2019, from the blue collection box at the Pearland post office. Warren further stated that they received an alert regarding check number 1535, which was altered and negotiated by someone they did not know, Tyren Brown. PI Palomar showed him check number 1536 which he said was altered and he did not know the person who the check was made payable to, Alexis Jackson. They do not know Brian Smith and he did not have permission or authority to be in possession of their mail.

15. On December 04, 2019, Affiant obtained a State Search Warrant for 150 Dominion Park Dr, Apt 1101. Agents executed the State Search Warrant at the residence when Smith was observed returning to the residence. Agents recovered well over approximately 800 checks from an upstairs bedroom. Agents also recovered several checks that appeared to have been in the final stages of being washed (container with brake fluid, checks laid out on a rack to dry). None of the recovered checks were made out to nor from SMITH, and the majority of the checks contained return addresses in Pearland, TX, while other checks had return addresses in Manvel, Crockett, Houston, Friendswood, Missouri City, Rosharon and Humble TX, and some checks with out of state return addresses such as California and Georgia. Agents also recovered two Postal Service Arrow Keys.


16. This same date, Postal Inspectors and Postal OIG Special Agent (SA) Russel Milton interviewed SMITH. SMITH minimized his involvement with the washing the checks that were found. Smith was vague about those who participated. Smith stated that he was not the person who

took mail from the collection boxes but someone had paid him a \$1000 to use his mom's car. Smith stated that the shoe boxes found in his bedroom with slips (checks) were given to him to be separated and he did not know anything about arrow keys in the box.

17. On this same date, Smith signed a consent to search for his iPhone.

18. On 12/05/2019, Smith's iPhone was submitted to Harris County District Attorney's Office Digital Forensics Investigations Unit. The Exam was completed and returned to Postal Inspectors on 12/06/2019. Continuing on this date, data recovered from Smith's iPhone provided Inspectors with a video displaying a pile of mail in the back seat of a vehicle on November 21 at approximately 7:59 AM. This video corresponds with the previously mentioned mail theft incident that occurred at the Pearland MPO on November 21 at approximately 7:32 AM. Several other Videos and images of checks not addressed to Smith but listing other account holders with addresses in Pearland Texas were also discovered on his iPhone.

19. Based upon the totality of the foregoing facts and circumstances, Affiant believes that evidence of a violation of 18 U.S. Code § 1708 (Theft or receipt of stolen mail matter) and 18 U.S. Code § 1704 (Keys or locks stolen or reproduced) and that there is probable cause for the issuance of an arrest warrant for SMITH.


Jesse Kirkegaard
United States Postal Inspector

Subscribed and sworn to telephonically at Houston, Texas, on this 10 day of December, 2019,
and I do find probable cause.


Christina A. Bryan
UNITED STATES MAGISTRATE JUDGE